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Bill would force Houston to sell water rights in planned reservoir

By Mike Morris

Houston would be forced to sell its water rights in a proposed reservoir west of Simonton to the Brazos River Authority under a bill Mayor Sylvester Turner said is an attempt by Gulf Coast petrochemical giants to secure cheaper water at the expense of the city's ability to accommodate growth.



The measure, which sailed through the Texas House last month, would require Houston to sell its rights in the proposed Allens Creek Reservoir by the end of this year for up to \$23 million, a move experts said would set a troubling precedent.

Turner said that amount simply would repay what Houston has spent on the project, not compensate the city for the loss of 15 percent of its surface water rights.

“You just don’t say, ‘We’re going to take it because politically we can,’” Turner said. “If you can do it here, then every water right in the state of Texas is at risk. We have never sold our water rights, and I could not explain to the people in the city of Houston why we would sell our water rights when this is a growing community in a growing region.”

Brazos River Authority officials and the bill’s author, House Natural Resources Committee Chair Rep. Lyle Larson, R-San Antonio, say Houston has developed its water rights in the Trinity and San Jacinto river basins so thoroughly that it has no urgent need for the Allens Creek Reservoir, whereas water needs outstrip the supply in the Brazos basin, hampering economic growth there.

“If I’m in their shoes, I’m looking at a project that’s projected to cost upwards of \$500 million for water that every relevant planning document that exists shows I don’t need — I wouldn’t want to do it,” Brazos River Authority Government Affairs Manager Matt Phillips said of Houston leaders. “There are, particularly, major industrial interests but also some municipal

interests in the lower Brazos basin that have a need for this project and have a need for it to be built sooner rather than later.”

The Brazos River Authority supported the city’s 2011 request to delay the start of construction from 2018 to 2025, Phillips said, but only because the agency feared the project would die if it opposed it. The roughly 100,000-acre-foot reservoir project is not listed in Houston’s five-year capital projects plan, though Turner stressed that he committed in writing to begin the project after Larson filed his bill.

Turner acknowledged Houston has a robust water supply: The city owns 70% of the water in Lake Livingston and Lake Conroe and all of Lake Houston. As recently as 2016, the city projected those sources alone would meet the typical needs of its retailer customers — homes, apartments and businesses, mostly — through 2060, without the need for the additional water Houston leases from the Trinity River Authority or gets from aquifers.

Houston, however, provides treated or untreated water across the region via 275 contracts with water authorities and other entities. Including these wholesale figures, city projections show the water in Allens Creek Reservoir must be available before 2060. The data also show that spending a year at peak demand, with all customers maxing out their water contracts, would exhaust the city’s available supplies today. That scenario is unlikely, said Houston Public Works director Carol Haddock, but she noted that periods of peak demand — driven by heat, irrigation needs and other factors — have more than doubled since the 1980s, to about 4 months.

“This proposed action by the Legislature undermines and discourages prudent water planning statewide,” she said. “It sends a message that no water rights investments are safe when the legislature can not only take away those rights, but also specify the payment amount with no regard for fair market value.”

Turner said he believes the bill is advancing because its industrial backers — the Texas Association of Manufacturers, Texas Chemical Council, Dow Chemical, Marathon Petroleum, BP America and BASF all favor the measure — have a huge presence in the district of House Speaker Dennis Bonnen, R-Angleton.

“They’re viewing it as the Speaker’s bill,” Turner said.

Bonnen’s office declined comment.

Larson said Bonnen has not been “directly involved” in discussions about the bill, and said Houston is “trying to play the victim.”

“It has nothing to do with who the speaker is, it has to do with the jobs. It has more to do with the economic viability of the state,” Larson said, adding that Freeport-area firms recently have passed on expansions. “They didn’t do it because we don’t have a firm water supply in the Brazos, and that’s directly related to the Allens Creek Reservoir not being constructed.”

Rich Wells, a Dow Chemical vice president, said at a March hearing on Larson's bill that Dow has passed on three expansions at its Freeport facility — the largest chemical plant in the western hemisphere, he said — due to insufficient water access.

“Water is a critical component to our operations. For the manufacturing sector to grow and expand, especially along the Gulf Coast, there must be new, reliable sources of water,” said Daniel Womack, Dow's regional director for state governmental affairs. “Allens Creek Reservoir has gone undeveloped for far too long. The Brazos River Authority has a massive demand for the project and is motivated to build the reservoir in a timely fashion.”

Supporters of the bill also have referenced the price of the proposed reservoir's water.

Houston's huge investments in pipelines and treatment plant expansions in the Trinity and San Jacinto basins have helped push its untreated water rate to \$235 per acre-foot. The Brazos River Authority, meanwhile, expects to charge about \$120 per acre-foot after it builds Allens Creek.

One acre-foot is equal to 325,851 gallons, enough to meet the average annual water needs of five Houston households.

Larson said in March that the comparatively high price Houston would charge downstream industries was one “genesis of the bill.”

Indeed, Turner said, “this is about dollars and cents for them.”

Larson's original bill called for Houston to sell its reservoir rights for \$5 million. Rep. Jessica Farrar, D-Houston, amended the legislation to increase the price to as much as \$23 million and then supported the measure when it reached a vote, saying she had negotiated in good faith and wanted to maintain that position.

“The issue is that the bill was moving forward one way or the other, so I worked and stayed in negotiation, basically, to try to make the city of Houston get back what they had put in,” Farrar said. “The city of Houston took a very firm position that they weren't going to negotiate at all, so I was sort of limited in my ability to ask — and I understand their position. They weren't going to give up water rights, and that's legitimate.”

Larson has acknowledged the bill is “unusual,” but said he views the action simply as rescinding a “misguided” law that granted the reservoir to the city and BRA outside typical application rules in 1999.

The Legislature that year revived an expired permit that had been granted for a cooling lake at a nuclear power plant that was never built and gave the water rights to the city and BRA on a 70%-30% split.

Ken Kramer, a retired Sierra Club director who has studied Texas water issues for four decades, said he had reservations about the 1999 law and feels no more comfortable with Larson's bill

now. Both, he said, inject the Legislature into a process that ought to be governed by predictable, administrative rules.

It was poor precedent for lawmakers to dictate in 1999 that a reservoir would get permits, he said, but it would be a worse precedent for legislators to, essentially, break a contract granting an entity water rights that generally continue in perpetuity.

Kramer, in fact, had viewed Larson's bill as simply a warning shot to bring Houston to the negotiating table; he said he was shocked to see it actually advance.

“The fact that the Legislature is now trying to divide the reservoir according to what they see as appropriate is, I think, very troublesome,” Kramer said. “Even though there might be somewhat unique circumstances involved here, I could well see another situation where the Legislature would step in and say, ‘This reservoir is going to be permitted and built,’ and then allocate the water according to whatever the power play is in the Legislature is at that time.”

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